

VOLUME 3 GENERAL TECHNICAL ADMINISTRATION**CHAPTER 25 OPERATIONAL CONTROL FOR AIR CARRIERS****Section 5 Title 14 CFR Part 135 Flight Locating Systems and Operating Rules**

3-2021 GENERAL. This section contains direction and guidance to be used by inspectors concerning Title 14 of the Code of Federal Regulations (14 CFR) part 135 flight-locating systems and operating rules. Inspectors should use this section with section 1 of this chapter when reviewing an operator's General Operations Manual (GOM) and when conducting inspections of part 135 operators.

3-2022 GENERAL REQUIREMENTS. Although 14 CFR part 135, § 135.77 explicitly requires that each operator exercise operational control, the method by which an operator does so is not closely defined by 14 CFR. Part 135 operations range from visual flight rules (VFR) operations in simple aircraft to extended overwater operations in highly sophisticated jet transports. Section 135.77 provides operators with the latitude necessary to design systems that fit the conditions surrounding the operations they conduct. Operators and principal operations inspectors (POI) must ensure, however, that each operator's system provides adequate control of the operation being conducted. Inspectors should be aware of the following requirements regarding operational functions:

A. Formal Releases. Part 135 does not require operators to prepare a formal release authorizing a specific flight. Part 135, § 135.69 does require that the operator restrict or suspend operations when either the pilot in command (PIC) or the operator becomes aware of a hazardous condition. One acceptable means an operator may use to comply with this requirement is to use a formal release system.

B. GOM Requirements. The operator's GOM must contain adequate briefing and trip planning procedures to ensure that all safety requirements are fulfilled. POIs shall ensure that each operator's GOM contains detailed policies, conditions, and specific procedures for each category of employee responsible for the authorization or planning of a flight.

C. Delegation of Authority. Part 135 operators commonly delegate the authority to PICs for initiating flights. Such delegation has generally proven to be adequate for the operation of general purpose, single-engine and multiengine airplanes and helicopters in on-demand operations. Such systems may be inappropriate, however, for commuter operations, air ambulance services, jet transport operations, operations conducted beyond the contiguous states, extended overwater operations, and complex operations requiring extensive planning or coordination. POIs should strongly recommend that operators establish operational control systems that require the concurrence of an individual authorized to exercise operational control and the PIC for all flight release decisions. National Aeronautics and Space Administration (NASA) statistics show that police and air ambulance service operators who have adopted such systems have had significantly better safety records than operators of the same type who have not had such systems.

3-2023 FLIGHT-LOCATING SYSTEMS. Part 135, § 135.79 requires that each operator maintain a flight-locating system. The system must provide for the timely notification of an FAA

facility or a search-and-rescue facility if an aircraft is overdue or missing. The operator's notification must be at least as prompt as notifications provided by FAA procedures and facilities.

A. Flightplans Filed by PICs. Part 135 operators may require PICs to file and activate air traffic control (ATC) flightplans as one means of complying with § 135.79. In this case, the operator's GOM must prohibit the PIC from operating without an activated flightplan until arrival at the destination airport. Operators may find that requiring the PIC to file a flightplan to satisfy the requirements of § 135.79 precludes certain operations. For example, it is impractical for a PIC to conduct a flight to a non-controlled field by cancelling instrument flight rules (IFR) at the last radio navigation fix and then proceeding under VFR to destination on a VFR flightplan. ATC does not accept composite IFR/VFR flightplans. Normally, ATC will not activate a VFR flight on an air traffic control frequency. A PIC who cancels IFR and then changes to a flight-watch frequency to activate a VFR flightplan is not in compliance with § 135.79. One acceptable means an operator may use to comply with § 135.79 are to require the PIC to telephone the person exercising operational control upon arrival at a destination not served by an ATC facility.

B. Procedures in Lieu of Flightplans. When an FAA flightplan is not filed, operators must have established procedures for following and locating each flight. The individual authorized to conduct operational control must be provided with at least the information required in a VFR flightplan.

C. Flight-Locating Information When Radio Contact Cannot Be Maintained. Part 135 operators are not required to maintain the capability to contact flights while they are airborne. When operations are conducted in an area in which radio contact cannot be maintained with ATC, the individual authorized to exercise operational control must be provided with the location, date, and estimated time at which the PIC will re-establish radio or telephone communications. Flight-locating information must be retained at the operator's principal base of operations, or at other places designated by the operator, until the completion of the flight. Operators should maintain sufficient records to show compliance with these requirements.

D. Flight Followers. Part 135 does not specify the qualifications or titles of individuals authorized to authorize or follow flights. Section 135.77 does, however, require the operator to list the name of each individual authorized to perform these duties in the GOM.

E. Contractors. Part 135 operators may contract with other operators or organizations to perform direct operational control functions. The operator remains fully responsible for ensuring that the operations conducted comply with the CFR, the operator's GOM, and with safe operating practices. The name of each employee of the contractor authorized to perform operational control functions for the operator must be placed in the operator's GOM.

F. Training. Operators are responsible for ensuring that individuals authorized to exercise operational control are adequately trained to perform their assigned duties. One acceptable means an operator may use to meet this requirement is to establish a training and qualification program such as that described in chapter 22 of this volume.

NOTE: Individuals exercising operational control must be knowledgeable of, and have access to, appropriate sections of the operator's GOM while performing their assigned duties.

3-2024 PART 135 FUEL-PLANNING REQUIREMENTS. The fuel-planning requirements of 14 CFR parts 91 and 135 are based on IFR and VFR Class I navigation within the contiguous states. Other types of operations or operations outside of the contiguous states may require additional or special planning.

A. VFR Operations in Airplanes. Section 135.209(a) prohibits takeoff in an airplane under VFR rules unless the airplane has enough fuel to fly to the airport of first intended landing. Thereafter the airplane must have enough fuel (computed at normal cruise) to either fly for 30 minutes during the day or for 45 minutes at night.

B. VFR Operations in Helicopters. Section 135.209(b) prohibits takeoff in a helicopter under VFR rules unless the helicopter has enough fuel to fly to the airport of first intended landing, and then to fly for 20 minutes at normal cruising fuel consumption.

C. IFR Operations in Airplanes. Section 135.223 prohibits takeoff in an airplane in IFR conditions unless the airplane has enough fuel to complete the flight to the airport of first intended landing. Thereafter, the airplane must have enough fuel to fly to the alternate airport, and then to fly for 45 minutes at normal cruise fuel consumption.

D. IFR Operations in Helicopters. Section 135.223 prohibits takeoff in a helicopter in IFR conditions unless the helicopter has enough fuel to complete the flight to the airport of first intended landing. Thereafter, the helicopter must have enough fuel to fly to the designated alternate airport, and then to fly for 30 minutes at normal cruise fuel consumption.

E. Contingency Fuel. Part 135 does not specifically require a specific increment of contingency fuel. Part 91, § 91.103, however, does require that such contingencies be considered in preflight planning. Therefore, an increment of fuel to compensate for foreseeable contingencies must be on board for takeoff. One such contingency would be a delay in receiving takeoff clearance at major terminals. The operator's GOM should contain specific policies and instructions for computing the amount of contingency fuel to be carried under the circumstances likely to be encountered in the operator's specific operation.

F. En Route Requirements. The fuel planning requirements discussed in subparagraphs A through E apply for takeoff. Part 135 does not specify the action the PIC must take if an alternate airport goes below minimums when the flight is en route, or how much fuel must be on board when the flight arrives overhead a destination or alternate airport. Section 135.69(b) allows a PIC to continue toward a destination when a hazard to safe operations may reasonably be expected to be corrected before arrival. Section 135.69(b) does prohibit a PIC from continuing a flight toward a destination, however, when the operator or the PIC knows of conditions that make continuation of the flight hazardous. The operator's GOM should contain specific policies and instructions on how the PIC is to proceed in foreseeable circumstances that may be encountered in the operator's specific operation.

3-2025 WEATHER REQUIREMENTS. Part 135, § 135.213 requires that weather reports and forecasts used in part 135 operations be prepared by the National Weather Service (NWS), a source approved by the NWS, or a source approved by the FAA (see section 1 of this chapter). Inspectors should ensure that part 135 operators are conducting operations in compliance with 14 CFR weather provisions, as follows:

A. VFR Operations. A flight may not depart under VFR rules unless the ceiling and visibility en route are forecast to be above the applicable VFR minimums until the aircraft arrives at the destination airport.

1) All available reports and forecasts must show that the flight can be completed in visual meteorological conditions. Available reports include Pilot Weather Reports (PIREP), which must be obtained and used when available.

2) When there is no information available from an approved source, § 135.213(a) authorizes PICs to use their own observations or those of another competent person for operations under VFR. This authority is limited to only those situations in which a report from an approved source is not available. For example, these procedures might be appropriate for floatplane operations at remote lakes where no weather observer is stationed. This provision does not relieve PICs and operational control personnel from obtaining and using the information that is available, such as area forecasts and PIREPs.

3) The operator's GOM must specify the circumstances under which PICs may use the provision of § 135.213(a). If observers other than PICs are used, operators must specify the training and qualifications of these observers.

B. Point of Departure—IFR Operations. A flight may not be originated when the weather at the departure point is below that specified in paragraph C057 or paragraph H106 of the operator's operations specifications (OpSpecs).

1) Takeoff weather minimums may be below the authorized landing minimums. For takeoff in such conditions, an alternate airport must be available, within one hour of flying time from the departure airport at normal cruise speed.

2) Operators may be authorized to use "lower-than-standard" takeoff minimums by paragraph C057(e)(1) of the OpSpecs. POIs, operators, and PICs must be aware of the limitations associated with this authority. The operator must have an approved "lower-than-standard takeoff" training program and qualification module. The PIC (and second in command (SIC), when applicable) must have satisfactorily demonstrated competency on their last competency check (135.293) or instrument proficiency check (§ 135.297). A single pilot may not conduct lower-than-standard takeoffs in weather conditions below Category I (CAT I) landing minimums.

C. Destination Weather—IFR. A flight may not depart under IFR or over-the-top rules unless appropriate weather reports or forecasts indicate that conditions will be at or above the minimums required by the OpSpecs at the destination airport at the estimated time of arrival (ETA). The reports or forecasts used must be the most currently available at the time of takeoff.

CAT I weather minimums are contained in paragraphs C053, C054, and H103 of the OpSpecs. CAT II and CAT III minimums are listed in paragraphs C059, C060, H108, and H109.

D. Designation of Alternate Airports. Section 135.223 specifies when an alternate airport is required for IFR operations or over-the-top operations. An alternate airport does not have to be designated when, for at least one hour before and one hour after the ETA at the destination airport, the appropriate weather reports or forecasts (or any combination of them), show the ceiling will be as follows:

- 1) At least 1,500 feet above the lowest circling minimum descent altitude, if a circling approach is authorized for the airport; or
- 2) If a circling approach is not authorized, at least 1,500 feet above the lowest published instrument approach minimum or 2,000 feet above the airport elevation, whichever is greater; and
- 3) The visibility at that airport will be at least three miles, or two miles more than the lowest applicable visibility minimums, whichever is greater, for the instrument approach procedures to be used.

E. Alternate Airport Weather. The forecast weather at the designated alternate airport must exceed the requirements of the table in either paragraph C055 or paragraph H105 of the OpSpecs, as applicable.

3-2026 IFR PASSENGER-CARRYING, OVER-THE-TOP OPERATIONS. Part 135 contains a set of rules that limit IFR passenger-carrying, over-the-top flights. These limitations do not apply to cargo-only part 135 flights.

NOTE: Section 135.181 does not prohibit a pilot from operating an aircraft in VFR conditions on an IFR clearance. An aircraft must be IFR equipped and the pilot or pilots must be qualified according to part 135 before an IFR clearance may be requested or IFR weather conditions are entered.

A. Operation of Single-Engine Aircraft in Over-The-Top Operations. Section 135.181 prohibit the operation of single-engine aircraft (airplanes and helicopters) in over-the-top operations unless the following conditions can be met:

- 1) The flight may be planned to climb to VFR over-the-top conditions as described in previous subparagraph A.
- 2) If a ceiling exists, VFR conditions must be forecast to exist under the ceiling along the planned route from the time the flight begins operating over-the-top until one hour after the flight is estimated to reach the destination.
- 3) At all points along the route, upon reaching destination, and for one hour thereafter, the forecast must show that the flight will be able to descend in VFR conditions (clear of clouds), should an engine fail.

B. Operation of Multiengine Aircraft in IFR, Over-The-Top, Passenger-Carrying Operations. A multi-engine aircraft (airplane or helicopter) may be released for IFR or VFR over-the-top, passenger-carrying operations under the following circumstances:

1) The flight may be operated under the conditions described in subparagraphs A and B, or;

2) The operator may limit the takeoff weight so that the aircraft can climb at 50 feet per minute at the minimum en route altitude (MEA) of the route to be flown or at 5,000 feet mean sea level (MSL), whichever is higher, with the critical engine inoperative.

Passenger-carrying, multiengine helicopters flying offshore may be started when the helicopter can climb at 50 feet per minute at the MEA or at 1,500 feet MSL, whichever is higher, with the critical engine inoperative.

3) A flight may start when weather forecasts and reports indicate that the flight will be able to operate in VFR conditions until it reaches the destination and then descend in VFR conditions to beneath the ceiling. Conditions at the destination must allow a VFR descent for the period of the ETA to one hour after ETA. While operating over-the-top, the flight must be able to comply with subparagraphs B 1) or B 2).

4) A flight may start when it can be operated clear of the clouds until it reaches the final approach fix at the initial approach altitude under VFR conditions and then conduct an instrument approach.

3-2027 OVERWATER, PASSENGER-CARRYING OPERATIONS. Except for takeoffs, landings, and operations within gliding distance of land, all passenger-carrying flights operated over water must be operated as follows:

A. Airplanes. Operators must limit the takeoff weight of an airplane so that it can climb at 50 feet per minute at an altitude of 1,000 feet above the surface with the critical engine inoperative.

B. Helicopters. Helicopters must be equipped with flotation devices.

3-2028 PART 135 EXTENDED OVERWATER OPERATIONS. Although part 135 does not specifically address the requirements for extended overwater operations, 14 CFR part 135, § 135.21(a) requires that each operator develop a manual establishing the policies and procedures for operations that are acceptable to the FAA Administrator. One means, but not the only means, that a part 135 operator may use to develop acceptable extended overwater operations procedures is to show compliance with those portions of 14 CFR part 121 that correspond to the operation conducted.

A. Flight Planning and Navigation. Flight planning and navigational requirements do not differ from those of part 121 operators conducting operations in the same airspace (see sections 1 and 4 of this Chapter).

B. Fuel Planning. The operator must provide adequate procedures for compensating with the limitations of forecast winds. One acceptable means an operator may use is to comply

with the requirements of, § 121.641 for reciprocating or turbopropeller aircraft and with the requirements of, § 121.645 for turbojet aircraft. These sections provide for appropriate en route reserves.

C. Engine-Out En Route Performance Limits. The operator must develop procedures to comply with the engine-out performance limitations of part 135, subpart I. The operator's analysis must show compliance at the most critical point on the route. Under most conditions, engine-out operations require drift down procedures. Inspectors must ensure that the operator's analysis considers how oxygen and aircraft systems are affected by engine loss.

3-2029 OPERATIONAL CONTROL.

A. A direct air carrier or commercial operator (certificate holder) certificated by the FAA includes any person or entity that provides or offers to provide transportation by air and who maintains control over the operational functions performed in providing that transportation. To legally act as a direct air carrier, a person or entity must hold an FAA 14 CFR part 119 certificate and comply with applicable regulations. Throughout this section, the terms "air carrier," "certificate holder," or "operator" will mean the holder of either an air carrier certificate or operating certificate issued with OpSpecs authorizing operations under part 135, including those authorized operations under both parts 121 and 135.

NOTE: A person or entity that wishes to engage in interstate common carriage operations must, in addition to holding an Air Carrier Certificate, hold appropriate economic licensing authority from the Department of Transportation's (DOT) Office of the Secretary (OST) under Title 49 of the United States Code (49 U.S.C.) section 41101 or 14 CFR part 298.

B. Each part 119 certificate holder conducting operations under part 135 must have a system and/or procedures for the exercise of authority over the initiation, conduct, and termination of a flight. The intent of OpSpec A008 is to promote a mutual understanding between an operator and the FAA concerning the system and procedures used by that operator.

1) Each part 119 certificate holder conducting operations under part 135 must maintain control and authority over the initiation, continuation, conduct, and termination of its part 135 flights. In addition, under § 135.77, each operator conducting operations under part 135 is responsible to list, in the manual required by § 135.21, the name and title of each person it authorizes to exercise operational control. Those operators issued OpSpec A039, Single Pilot Operator, or OpSpec A040, Single Pilot-in-Command Operator, may not have manuals but may list these authorized persons in OpSpec A039 or A040, as applicable. If a certificate holder is issued OpSpec A037 or A038 and has a full deviation from the manual requirements, these persons must be listed in the certificate holder's OpSpec A006. A part 135 operator may not delegate the responsibility to maintain operational control over its air transportation and commercial services to any outside entity, including any aircraft owner and/or any aircraft management company.

2) The FAA has become aware that aircraft owners and aircraft management companies have entered into contracts to carry passengers or cargo for compensation or hire.

These aircraft owners and management companies solicit and separately contract with a certificate holder conducting operations under part 135 purportedly to allow the flight operations promised to their customers to be conducted under the auspices of the operator's air carrier certificate. Under some of these arrangements, a "certificate fee" is provided to the part 119 certificate holder conducting operations under part 135 and operational control is exercised by the aircraft owner or management company. Where the aircraft owners and management companies are not also certificated as direct air carriers or commercial operators by the FAA to engage in common carriage, such arrangements are unlawful. In addition, when one certificate holder owns an aircraft that it is not authorized to be used in common carriage and enters into an arrangement with a second certificate holder under which the second certificate holder purportedly operates the aircraft, such an arrangement is unlawful if the aircraft owner/certificate holder actually conducts the flights in air transportation.

3) The FAA cautions each air carrier or commercial operator that holds a part 119 certificate authorizing part 135 operations that it may not franchise or lease out its authority to engage in part 135 operations to third parties. Persons not certificated by the FAA to engage in part 135 operations, or persons certificated by the FAA but not authorized to use the type of aircraft used in an operation, or to conduct the kind of operation being conducted, may not be directly or indirectly authorized by a part 135 operator to conduct flights under the authorized certificate holder's name, or under that authorized operator's fictitious business name(s) (i.e., "doing business as").

C. Operational Control.

1) Maintaining operational control of flights (§ 135.77) and providing flight locating functions (§ 135.79) are two distinct responsibilities of each part 135 operator. Flight locating requires procedures by the operator to locate each flight for which an FAA flight plan is not filed. Having a sufficient flight locating system does not mean that the part 135 operator is properly maintaining operational control of a part 135 flight. Operational control also requires that an operator has the knowledge to make those decisions perform those actions on an ongoing basis that are necessary to operate flights safely and in compliance with the regulations, and be held accountable for those decisions and actions.

2) Maintaining operational control requires the part 135 operator to, among other things:

- a) Ensure that it alone conducts operations authorized in its OpSpecs.
- b) Ensure that only its crewmembers that are trained and qualified in accordance with the applicable regulations and the certificate holder's approved training program, are assigned to conduct a flight (see part 135, § 135.115).
- c) Before initiation of a flight or series of flights, know the identity of each crewmember and affirmatively determine that the crewmember is qualified to function as a required crewmember on the flight. Absent such knowledge and determination, the part 135 operator must not assign a crewmember to a flight or series of flights.

d) Ensure that all of its crewmembers are in compliance with all applicable flight, duty, and rest requirements before assigning the crewmembers to a flight.

e) Designate a PIC for each flight before the flight commences.

f) Specify the conditions under which a flight may be operated, such as determining weather minimums, proper aircraft loading, center of gravity limitations, icing conditions, and fuel requirements.

g) Put procedures in place to ensure that when safety conditions specified for a flight cannot be met, the flight is canceled, delayed, rerouted, or diverted.

h) Ensure that an aircraft is airworthy and is in compliance with the conditions and limitations specified by the FAA-approved inspection/maintenance program for the certificate holder before it is allowed to depart on a part 135 flight.

i) Have a system for locating each flight if a flight plan has not been filed.

3) The manner in which each part 119 certificate holder conducting operations under part 135 ensures operational control of flights conducted under its certificate will necessarily vary with the size and scope of the operations and the kind of aircraft flown by the operator. It is impractical, however, for an individual to exercise operational control over flights without the assistance of others in any but the simplest and most basic flight operations. Thus, each part 135 operator must have an organization and system in place—including all the necessary tools such as recordkeeping and management surveillance/oversight—that is sufficient to ensure that all functions have been accomplished before a flight or a series of flights is authorized to depart. This includes establishing effective internal communications, operating procedures, and administrative controls to accomplish regulatory requirements. In addition, the part 135 operator must publish these procedures in the operator's general operations manual for use by the certificate holder's flight, ground, and maintenance personnel. For those issued OpSpec A037, A038, A039 or A040 that have a full deviation from the manual requirement, abbreviated procedures may be entered into OpSpec A008.

4) Ordinarily, base inspections and operational control evaluations focus on the structure and effectiveness of the certificate holder's operational control system, as revealed by evaluations of the factors identified in paragraph 3-2029C2) above. If these evaluations, or other factors, reveal potential inadequacy or loss of operational control, further investigation may be warranted. Factors to be considered in such investigations include, but are not limited to:

a) Who is in actual or legal possession of the aircraft?

b) The business relationship between the part 119 certificate holder conducting operations under part 135 and the crewmembers. In addition, under part 119, § 119.53(b), an aircraft owner is prohibited from leasing an aircraft and a pilot to a certificate holder. If the certificate holder decides to use a pilot who is employed by the aircraft owner, that pilot must become the direct employee or agent of the certificate holder. The certificate holder is not required to provide any monetary compensation to the pilot. However, if the pilot receives additional monetary compensation specifically for serving as a flight crewmember on a revenue

c) Insurance Arrangements. The required OST Form 6410, U.S. Air Carriers—Certificate of Insurance, must certify that certificate holder is insured in accordance with DOT regulations.

d) Other payments, such as fuel payments, insurance payments, administrative payments, and the method of customer payment for air transportation services, may be helpful in understanding the relationship between the certificate holder and other entities. For example, it may be completely acceptable for a lease between an aircraft owner and a certificate holder to place the burden for fuel payments on the owner of the aircraft. However, owner fuel payment responsibility, in combination with other circumstances (e.g., the aircraft owner directly collecting payments from the customer and disbursing such payments to the certificate holder after deducting fuel and other costs) could indicate that the owner is in operational control and not the certificate holder.

D. Fictitious Business Names: Doing Business As (DBA).

1) Under part 119, § 119.9(a), a certificate holder may operate an aircraft under part 121 or part 135 only under a business name appearing in the certificate holder's OpSpecs. OpSpec A001 (Issuance and Applicability) identifies the name of the certificate holder to whom the OpSpecs are issued. The name of the certificate holder that is issued the OpSpecs must be the legal name of the certificate holder.

2) OpSpec A001 also provides for authorization to conduct operations under a DBA. The addition of an aircraft owner's and/or management company's name (or close likeness to its name) as a DBA on an air carrier's OpSpecs does not constitute an authorization for the aircraft owner or management company to conduct business as the air carrier. Indeed, such arrangements have the potential to create confusion as to who is exercising operational control of the part 135 flight.

3) Aircraft owners, management companies, and other persons that do not hold part 119 certificates are reminded that air carrier operations can only be conducted by air carriers that have been issued an FAA part 119 certificate and that certificate holder is in direct control of the operations. The addition of a DBA that is the name of another company or corporation that has no part 119 certificate will not be allowed without concurrence from the Air Transportation Division, AFS-200. The required OST Form 6410 must be submitted in accordance with subparagraph C4)c) above.

E. OpSpec A008. The system and procedures to maintain operational control used by an operator must be described or referenced in OpSpec A008. It is preferable to complete OpSpec A008 with references to an operator's manual or sections of an operator's manual that describe the system and/or procedures used by that operator. It is not necessary to control these references by date. The references should be changed only when a revision to the operator's manual makes the reference in the OpSpecs incorrect. In the case of a certificate holder issued a

deviation from the manual requirements, (e.g., a certificate holder issued OpSpec A037, A038, A039, or A040) those procedures may be entered directly into OpSpec A008 itself.

1) Often, it may not be appropriate to use references in OpSpec A008. In these cases narrative descriptions may be necessary. When a narrative description is used, it should be brief but provide sufficient information so that the FAA and the operator have the same understanding about the system and/or procedures used by the operator.

2) The description of the systems and/or procedures for controlling flight movement as described in the operator's manual (which is referenced in OpSpec A008), or described in a narrative in OpSpec A008, must include the following information, as appropriate to the kind of operation:

- a) Methods and procedures for initiating, diverting, and terminating flights;
- b) Persons or duty positions authorized to, and responsible for, exercise of operational control;
- c) Facilities and location of facilities used by the operator in the exercise of operational control;
- d) Communication systems and procedures used by the operator;
- e) The methods and/or procedures used by the operator to ensure all authorized aircraft are airworthy;
- f) Emergency notification procedures;
- g) Methods and procedures for ensuring that assigned crewmembers are qualified before and during all flight operations; and
- h) Methods and procedures to ensure the assigned PIC knows the certificate holder's responsibilities to exercise operational control.

3) The POI, in coordination with the principal maintenance inspector and principal avionics inspector, must evaluate and substantiate submitted information. If the POI does not concur with the operator's proposal, he or she will forward a letter to the operator denying the proposed system with an explanation of the reasons for denial. The operator should contact the POI to address the POI's concerns. If the POI concurs that the operational control system should be approved, he or she will prepare and forward a letter to the operator accepting the proposed system.

F. Operational Control Failures. The level of severity of the failure in operational control will dictate the actions required by both the certificate holder and the FAA. Simple cases may require reinforcement or realignment of management structure or procedure. In such cases, administrative action may be acceptable. In more pronounced cases, civil penalty and/or certificate action may be appropriate. For guidance regarding the appropriate type of enforcement action and amount of sanction, refer to the agency's sanction guidance. In cases of

1) Loss of operational control within the air carrier—hands-off management results in inadequate controls over its own operations.

2) Loss of operational control within the air carrier—exercise of operational control by an unapproved person.

3) Loss or surrender of operational control externally; e.g., an air carrier's illegal renting/franchising-out the use of its air carrier certificate to one or more uncertificated entities.

G. Operational Control Systems Key Concepts. Operational control affects each aspect of a certificate holder's activities, such as, operations, training, aircraft maintenance, advertising, personnel management, capital asset management, aircraft leases, financing, and insurance.

1) The key concepts of operational control are that the certificate holder retains authority and responsibility for operations conducted under its certificate and is capable of conducting such operations. To exercise that authority and meet that responsibility, the certificate holder has to have knowledge of its flight operations, and control those operations through its management personnel for functions described in paragraph D(6)(a) of OpSpec A008. When the certificate holder performs the functions described in subparagraph D(6)(b) of OpSpec A008, those functions must be performed by a certificate holder's employees or agents.

2) Basic Operational Control Questions.

a) The basic questions that must be answered in any review of operational control are:

1. "Who makes the decisions to assign flight crewmembers and aircraft, accept customer requests, and initiate, conduct, and terminate flights?" and

2. "For whom do the pilots work as direct employees or agents?"

b) In both cases, the answer must be "the certificate holder."

NOTE: For contracted maintenance, the certificate holder can direct its action through an appropriate chain of command such as through a contracted part 145 repair station's management chain to the actual individual conducting aircraft maintenance. Also, the certificate holder may contract to an individual for aircraft maintenance. In either case, the actual work being conducted must be in accordance with the certificate holder's approved maintenance and inspection program and under the oversight of the certificate holder's management.

3) Similarly, a certificate holder may contract with a part 142 training center to conduct a portion of the operator's approved training program. During such training the training center and its employees are acting on the behalf of the certificate holder and are subject to the certificate holder's guidance, direction, and standards as communicated through the training center's management.

4) Regardless of the relationship between a certificate holder and another entity (customer, aircraft owner, broker, etc.), the certificate holder must make the flightcrew and aircraft assignments, and determinations regarding the initiation, conduct, and termination of the flight.

5) Whether the pilot or mechanic is a direct employee or an agent, or works for a part 145 repair station or part 142 training center, he or she is doing the certificate holder's work and must adhere to the directions of the certificate holder's management in matters related to flight operations and the air carrier's maintenance, inspection, or training program, as appropriate.

6) In on-demand operations, no flight occurs unless the customer makes a request. This is not the initiation of a flight. Also, a customer may request that specific aircraft and/or pilots be assigned to flights where the customer is a passenger. This is not, by itself, the exercise of operational control by an uncertificated entity, but rather a customer preference in negotiating a service. In such cases, the certificate holder must apply the regulations, its OpSpecs, standards, procedures, policies, and processes to determine if the customer request can be met safely and in compliance with the regulations.

7) The same is true of customer-requested diversions in-flight, whether for general customer preference (change in destination for business reasons, for example) or medical reasons (such as in the case of an air ambulance flight). Again, if the certificate holder determines that the request can be satisfied safely and within the regulations, and the certificate holder controls the decisionmaking process and is (through its authorized employees and agents) the decisionmaker, operational control is not necessarily lost.

H. Two-Tiered Operational Control Concept. OpSpec A008 contains a two-tiered approach to operational control.

1) The First Tier. All first-tier actions must be taken by the certificate holder's direct employees.

a) The first tier is the assignment of flight crewmember(s) and aircraft for revenue service under the operating certificate. The assignment of crew and release of aircraft to revenue service is the responsibility of the certificate holder, and must be made by the management of the certificate holder or management delegates. In order to be delegated the authority to make these decisions, the management delegates must be trained, found competent, and designated by the certificate holder, be listed in the GOM (or in OpSpec A006, A039 or A040, if applicable), and be under management supervision.

b) Management supervision means, for example, that the certificate holder tracks the actions of the management delegate or employee, samples the work of that employee

(reviews a sample of the decisions made), and has the ability to enforce the certificate holder's standards through corrective actions such as retraining, requalification, or disciplinary actions such as disqualification, demotion, suspension, or termination. Because the certificate holder is responsible for the conduct of its employees or agents, it must have the ability to monitor and control their performance.

2) The Second Tier. All second-tier actions may be taken either by the certificate holder's direct employees or by the certificate holder's agents. The second tier of operational control is more tactical. This involves the decisions made by personnel (such as the PIC) in the day-to-day conduct of operations. This may include the initiation of flights upon the PIC receiving a request from the customer directly (often the case in on-demand operations being conducted under a dedicated service contract, such as offshore operations or emergency medical service). This is acceptable if the PIC is authorized by the certificate holder to make those decisions on behalf of the certificate holder. To do so would require that the PIC be trained, found competent by the certificate holder, designated, be listed in the GOM (or in OpSpec A006, A039 or A040, if applicable), and be under management supervision. If maintaining a list of these personnel in the GOM is too cumbersome, a list of these personnel may be maintained at the air carrier's principal base of operations and referenced in the GOM. The method of maintaining and distributing this list to all affected parties must be described in A008 or in the GOM.

3) The GOM (or other appropriate documentation) must contain guidance which describes the certificate holder's operational control system. The training program must provide the certificate holder's personnel with the knowledge and skills required to ensure that the operational control system is effective.

I. Surveillance.

1) In conducting all surveillance activities, inspectors should consider if the management structure, training, procedures, and practices of the certificate holder provide for effective operational control. When conducting certification and surveillance activities, principal inspectors should evaluate the effectiveness of the certificate holder's or applicant's operational control system.

2) Seldom does a single factor determine if an operator has lost operational control. The following factors are offered to provide insight to the effectiveness and regulatory compliance of a certificate holder's operational control system. When factors exist that indicate that operational control may be ineffective or lost, further investigation is required to ascertain the compliance level of the certificate holder. Upon further investigation, the relative value of the individual factors will be determined and an accurate assessment can be made of the operational control system.

3) Some specific questions to consider in these evaluations are:

- a) Who scheduled crew and aircraft?
- b) Who accepted charter flights from the public?

- c) Who reviews weather and Notices to Airmen?
- d) Who performs flight planning?
- e) Who designates PIC for each flight?
- f) Who ensures that crews comply with flight and duty requirement prior to departure?
- g) How is the flightcrew compensated? See subparagraph C4)b) above. Is an obligation placed on the air carrier, by lease or other arrangement or mechanism with the aircraft owner, to use the aircraft owner's pilots (e.g., a wet lease)?
- h) Who specifies conditions under which a flight may be dispatched or released, e.g., weather minimums, flight planning, airworthiness of aircraft, aircraft loading, and fuel requirements?
- i) Who ensures that only trained and qualified crews are assigned to conduct flights?
- j) Whether the air carrier ensures that only those operations authorized by its OpSpecs are conducted?
- k) Prior to departure, who ensures the flight complies with the conditions specified in the release?
- l) When conditions specified for a flight's release cannot be met, who ensures that the flight is canceled, delayed, rerouted, or diverted?
- m) Who monitors the progress of each flight, and initiates timely actions when the flight cannot be completed as planned, including diverting or terminating the flight?
- n) Has the certificate holder shifted financial accountability for its operations or the conduct or safety of the part 135 flight from the air carrier to the aircraft owner or others?
- o) Does an uncertificated entity (one that does not hold a part 119 certificate) or an entity that is not authorized or permitted by DOT to act as an indirect air carrier receive the direct payment for air transportation from the customer?

J. Leases and Other Agreements.

- 1) OpSpec A008 requires the certificate holder to determine that all leases and other agreements affecting the aircraft and personnel of the certificate holder are reviewed to ascertain that they are in compliance with regulatory requirements and limitations. The limitations are centered on illegal wet leases (i.e., leases in which an uncertificated entity provides possession of a specific aircraft and at least one crewmember to a certificate holder for a specified period of time). Other nonleasing arrangements could raise operational control red flags, especially those

agreements where an aircraft owner dictates which pilot the air carrier can use on part 135 flights with third-party passengers or cargo.

2) Should inspections or surveillance reveal possible or potential loss or transfer of operational control, further investigation may involve the review of leases and other agreements relative to the operation.

3) A determination of who exercises operational control is not dependent solely on the wording of such leases or other agreements or arrangements. Such agreements cannot be viewed in a vacuum. A dry lease, in and of itself, does not shift responsibility for operational control to the lessee. Examination of the substance of a transaction, rather than the form, is essential to determine who actually exercises operational control. Case law has established that the substance, not the form, of contractual agreements, establishes the nature of the relationship between parties, and that taking enforcement action against those who effectively operate for compensation or hire in violation of FAA safety regulations is appropriate. When necessary, principal inspectors should seek the assistance of their respective regional counsel for review of leases and other agreements.

K. Summary of Operational Control. Only approved persons may exercise operational control on the certificate holder's behalf.

1) The certificate holder must have adequate controls in place to ensure that officials in a position of authority over flights conducted under the certificate do so safely, and in compliance with the regulations, OpSpecs, GOM, as applicable, and accepted or approved procedures.

2) Management of operations should never be inattentive, distracted, or careless. Hands-off management is not a legitimate excuse for failing to maintain operational control.

L. Specific Policies and Procedures. The following notes describe the FAA's position on the subjects as they relate to operational control.

1) Advertising by Indirect Air Carriers.

a) Indirect air carriers, including air charter brokers, may not purport to directly provide transportation by air.

b) Indirect air carrier advertising must indicate the name of the certificate holder providing transportation by air. This does not mean that all pages of a Web site, or a brochure or any other advertising vehicle must identify the certificate holder. If more than one certificate holder is used, language to the effect that the advertiser uses FAA-certificated air carriers or operators is acceptable. The test is that a casual reader of the advertisement would understand who is actually conducting the transportation by air.

c) The OST considers it to be an unfair and deceptive practice and unfair method of competition under its economic regulatory authority for any person or entity that is not a direct air carrier to hold out or provide air transportation as a direct air carrier.

2) Aircraft Marking. Must comply with part 119, § 119.9(b), Use of business names.

a) The aircraft must be marked so that the "... name of the certificate holder... or the ... certificate number of the certificate holder who is operating the aircraft, is legibly displayed on the aircraft and is clearly visible and readable from the outside of the aircraft."

b) In some cases of contractual service (helicopter emergency medical service, offshore, oil and gas, etc.), the customer may desire that the aircraft have markings such as the oil company or hospital logo and/or name displayed on the aircraft. In such cases, the operator must ensure that it is clear to the passengers and crew that the certificate holder is conducting the air transportation service. Adherence to § 119.9(b) is still required.

c) Regulations of the OST prohibit air charter brokers and other ticket agents from permitting their names or logos to be used in a manner that misleads the public into thinking they are an airline. (14 CFR part 399, § 399.80(b)).

3) Billing.

a) There may be circumstances when billing may be accomplished by the indirect air carrier.

b) If possible, the billing should indicate that the air transportation was provided by the certificate holder (by name).

c) In some circumstances, such as insurance or Medicare/Medicaid billing by medical service providers, it is highly impractical for the bill to reflect the name of the certificate holder (transportation by air provider). This is acceptable if other literature, Web sites, advertising, etc., adequately reflect that transportation by air is provided by the certificate holder.

4) Delegation of Authority.

a) Authority and duty, but never responsibility, may be delegated (see paragraph 3-2022).

b) Functions may be contracted to personnel or organizations in accordance with paragraph 3-2023 and Volume 3, Chapter 25, Section 1, General Topics, paragraph 3-1921.

c) Persons to whom authorities or duties (functions) have been delegated must be trained and found competent by the certificate holder, be designated, be listed in the GOM, in OpSpec A006, A038, or A040, as applicable, and be under management supervision and oversight to ensure performance (management must have disciplinary authority over its contractors).

d) Some functions may never be delegated outside the air carrier, e.g., see subparagraph D(6)(A) of OpSpec A008.

5) Flight Locating.

a) The certificate holder must accomplish flight locating unless FAA flight plans are filed for each flight.

b) The certificate holder may delegate flight locating duties to employees of, or agents for, the certificate holder.

c) Again, these persons must be trained and competent, be designated in writing, be listed in the GOM (or in OpSpec A006, A039 or A040, if applicable), be provided with procedures, policies, and guidance, and be under certificate holder management oversight.

d) The certificate holder must have knowledge of all flight operations.

6) Crew Resource Management (CRM)/Air Medical Resource Management (AMRM).

a) Operational control concepts do not counter CRM and AMRM concepts.

b) In any decisionmaking process, there is a designated decisionmaker.

c) In air transportation matters, that decisionmaker is the certificate holder.

d) Operational control ensures that the certificate holder exercises that decisionmaking authority and meets its regulatory responsibilities.

e) The PIC is directly responsible for, and is the final authority as to, the operation of the aircraft (part 91, § 91.3). The PIC serves in this regulatory capacity and as an agent for the certificate holder after assignment to PIC duty by management.

7) Initiation and Diversion.

a) If authorized by the certificate holder, in accordance with the FAA-approved operational control system, the PIC may receive a request from a customer, and, within his/her documented authorities, accept or decline the request in accordance with certificate holder's policies.

b) The PIC must be trained and competent, designated in writing, and listed in the GOM (or in A006, A039 or A040, if applicable), provided with procedures, policies and guidance, and be under certificate holder management oversight. If maintaining a list of these personnel in the GOM is too cumbersome, a list of these personnel may be maintained at the air carrier's principal base of operations and referenced in the GOM. The method of maintaining and distributing this list to all affected parties must be described in OpSpec A008 or in the GOM.

8) Operations Control Center.

a) The rules do not specifically require an operations control center.

b) However, the complexity of a particular operation may make the use of an operations control center necessary to ensure the effectiveness of operational control by the certificate holder.

c) Numerous factors determine the complexity of an operation, such as the number and geographic dispersal of aircraft, diversity of aircraft types, diversity of types of operations (visual flight rules (VFR)/instrument flight rules (IFR)/night vision goggles, and diversity of operating environments (domestic/international).

9) Remote Area Operations.

a) Remote area operations often involve extended operations outside of communications with the certificate holder. Using the two-tiered system of operational control, these operations may be conducted if the certificate holder's management or management designees make the assignment of the crew and the release of the aircraft at the beginning of the remote area operation assignment. Because such assignments may extend over several days, the certificate holder must determine that the crew and aircraft will remain in deployable status (pilot checks, medical examinations, aircraft inspection, and maintenance requirements will all be satisfied) during the assignment period. The crew must receive specific instructions on how to monitor and control operational control elements that it will be authorized to control for the certificate holder when outside communication with company management. In such cases, the certificate holder must establish procedures and alternatives for the PIC to use in the conduct of flight operations, including, but not limited to:

1. Flight, duty, and rest requirements.
2. Airport landing site requirements.
3. Weather limitations.
4. Weight and balance control.
5. Maintenance and servicing requirements.
6. Communications alternatives (relay with airborne aircraft, etc.).
7. Hazardous materials.
8. Emergency operations.

b) Before operating in an area outside of communications with the certificate holder, the certificate holder and PIC must agree on a time, place, and date where communications will be reestablished and the emergency plan if they are unable to establish communications.

c) When applicable, remote area operational control procedures must be described in the GOM (or in OpSpec A008 for those certificate holders issued OpSpec A037, A038, A039, or A040). Furthermore, remote operational control procedures must be addressed in

the training program for certificate holders that are not issued OpSpec A037, A038, A039, or A040, and for those certificate holders that do hold OpSpec A037, A038, A039, or A040, it also must be addressed in training program unless they have a full deviation that includes training. In addition, the certificate holder must identify the area(s) in which remote area operational control procedures will be utilized, and such areas must be described in the FAA-accepted GOM (or in OpSpec A008 for those certificate holders issued OpSpec A037, A038, A039, or A040).

10) The Air Ambulance Operators: Civil Aeronautics Board Exemption (83-1-86). It does not permit uncertificated entities to conduct flights in air transportation.

a) The air medical (emergency medical services) community secured a blanket exemption from the economic authority requirements of the DOT on January 12, 1983.

b) This exemption is still valid.

c) It pertains only to the economic authority to act as an indirect air carrier.

d) The actual flight operations and the operational control must be accomplished by a certificate holder.

RESERVED. Paragraphs 3-2030 through 3-2045.